Reporting & Investigating Improper Governmental Activities

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http://ucwhistleblower.ucop.edu
Agenda

- Importance of Your Role
- Who Investigates What?
- UC Whistleblower Policies
- Dos & Don’ts
- Exercising Judgment
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Association of Certified Fraud Examiners’
CONCLUSION ON DETECTING FRAUD

“Occupational frauds are more likely to be detected by tips than by any other means” Association of Certified Fraud Examiners, 2010 Report to the Nation on Occupational Fraud and Abuse

UC Whistleblower Program
Policy on Reporting & Investigating Allegations of Suspected Improper Governmental Activities

See overview of policies from BOI Pre Work

UC Whistleblower Program
### Fiscal Year 2009 - 2010 Investigations Summary

#### 635 New Cases/693 Allegations *

<table>
<thead>
<tr>
<th>Count</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>271</td>
<td>43%</td>
<td>UC Hotline, Anonymous Reporter</td>
</tr>
<tr>
<td>61</td>
<td>9%</td>
<td>UC Hotline, Identified Reporter</td>
</tr>
<tr>
<td>68</td>
<td>11%</td>
<td>Non-Hotline, Anonymous Reporter</td>
</tr>
<tr>
<td>235</td>
<td>37%</td>
<td>Non-Hotline, Identified Reporter</td>
</tr>
</tbody>
</table>

#### 454 Closed Cases/490 Allegations *

<table>
<thead>
<tr>
<th>Count</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>77</td>
<td>16%</td>
<td>Substantiated</td>
</tr>
<tr>
<td>194</td>
<td>40%</td>
<td>Not Substantiated</td>
</tr>
<tr>
<td>219</td>
<td>44%</td>
<td>Other Outcomes†</td>
</tr>
</tbody>
</table>

*A Case can include up to 3 Allegations
† Other Outcomes includes Not Specified, Inconclusive, Referred to Management, Escalated to ELR/HR, Unable to Verify, Initiator Unwilling to Participate, Procedural Change Needed & Frivolous
Who Performs Investigations?

- Academic Personnel
- Animal Research Office
- Disability Coordinator
- Environmental Health & Safety
- Health Sciences Compliance Officer
- Human Resources
  - Labor Relations
  - Employee Relations
- EEO/AA
- Risk Management
- Student Judicial Affairs
- Institutional Review Board
- Internal Audit
- Management overseeing ad hoc external processes
- Medical Staff
- NCAA Compliance Officer
- Office of the General Counsel
- Privilege & Tenure Committee
- Research Administration
- Retaliation Complaint Officer
- Title IX Officer
- University Police
Policy Objective

To adhere to the spirit of the state whistleblower statutes by creating

1. an environment in which suspected improprieties are brought forward without fear of retaliation
   and
2. mechanisms that ensure an appropriate institutional response to all suspected improprieties (not just whistleblower reports).
Improper Governmental Act (IGA)

Any activity by a state agency or by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that

(1) is in violation of any state or federal law or regulation including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty or

(2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.
Definitions

Protected Disclosure*:
any good faith communication that discloses or demonstrates an intention to disclose information that may evidence
1. an improper act
   or
2. any condition that may significantly threaten the health or safety of employees or the public
   if the disclosure or intention to disclose was made for the purpose of remedying that condition.

*Not restricted to whistleblowers.
Key Concepts

- Can be in a variety of forms
- Can be to management OR any University official
- If not recognized as a IGA when made, danger of recharacterization as retaliation complaint
- Malicious intent does not nullify the potential validity of allegations
- Frivolous complaints may themselves be IGAs
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UNIVERSITY of CALIFORNIA

Please note: This is not a 911 service. If you are concerned about an immediate threat to life or property, or need to report a criminal activity in progress, please contact 911 or your local emergency service.

The University of California takes violations of federal and state laws, and of University policy, seriously. We have selected EthicsPoint to provide a confidential means for reporting suspected misconduct. You may report your concerns by calling our hotline, at 800.403.4744, and speaking with an EthicsPoint representative.

Or, simply click on the the location where the incident took place: one of our ten campuses, five medical centers, our national laboratory, the Division of Agriculture & Natural Resources, or the Office of the President.

To check the status of a report you previously made, please click on the location.

With either method of reporting, you can choose to remain anonymous. You will receive a report key and password that will allow you to continue to communicate with us anonymously.

This hotline service allows you to report incidents of the following nature:
- Fraud, Theft or Embezzlement
- Economic Waste, or Misuse of University Resources
- Conflicts of Interest or Conflicts of Commitment
- Computer Security and other Privacy Violations
- Public or Environmental Health and Safety
- Discrimination or Sexual Harassment
- Research or Academic Misconduct

universityofcalifornia/edu.hotline

report in English or Spanish 800.403.4744 – report in any language

UC Whistleblower Program
Investigations Policy Overview

- Reporting to Locally Designated Official (LDO)
  - Triage Process by LDO and Investigations Work Group
    - *Two pronged test—“If True” & Sufficient Basis*
    - ✓ Investigation within natural jurisdiction
    - ✓ Referral to Management*
  - Communications, Coordination & Monitoring by LDO
- Reporting to Management, IGA source & others as appropriate

* If the two criteria are not met— “If True” test and “Probable Cause” Standard
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Locally Designated Officials
Berkeley – Linda Williams
Davis – Wendi Delmendo
Irvine – Mike Arias
Merced – Janet Young
Los Angeles – Bill Cormier
Riverside – William Kidder
San Diego – Gary Matthews
San Francisco – Elizabeth Boyd
Santa Barbara – Ronald Cortez
Santa Cruz – Charlotte Moreno
Office of the President – Dan Dooley
Agriculture & Natural Resources – Jake McGuire
Berkeley National Lab – Jim Krupnick

Investigations
Work Group

Local Investigative Bodies
Academic Personnel
Disability Coordinator
Health Sciences Compliance Officers
Labor Relations
EEO/AA Officer
Student Judicial Affairs
Internal Audit
Medical Staff
Office of the General Counsel
Research Administration
Title IX Officer
Animal Research Office
Environmental Health & Safety
Human Resources
Employee Relations
Risk Management
Institutional Review Board
Management/Ad Hoc External
NCAA Compliance Officer
Privilege & Tenure Committee
Retaliation Complaint Officer
University Police

UC Whistleblower Program
Reporting Criteria

- Results from significant control or policy deficiency
- Likely to receive media or other public attention
- Involves misuse of University resources or creates exposure or liability in potentially significant amounts
- Significant possibility of resulting from a criminal act
- Involves significant threat to health or safety of employees and/or the public
- Judged significant or sensitive for other reasons
Guidance

- Allegations – not just findings – are reportable.

- Sensitivity and Media Attention override dollar impact.

- Regents Audit Committee’s expectation: "No Surprises."

- Materiality Counts: balance bias towards disclosure against referrals to LDO for a missing "quart of strawberry ice cream."

- Remember that matters reported externally trigger internal reporting.
When Confronted with Whistleblower Allegations

**Dos**

- Learn *UC Policy reporting channels*
  - Locally Designated Official
  - Internal Audit Director
  - Human Resources Director
- Be alert to informal communications of allegations (protected disclosures)
- Contact Internal Audit and Human Resources before taking any personnel action
- Act with *speed and Hold the matter confidential*
When Confronted with Whistleblower Allegations

Don’ts

- **Dismiss** the matter out of hand
- **Launch your own investigation**
- **Confront** the accused or otherwise **tip them off**
- **Disclose** the matter to any unnecessary parties
- **Try to settle or resolve the matter yourself**
The University has a responsibility to conduct its affairs ethically and in compliance with the law. If you suspect that a UC employee is engaged in improper governmental activities, you should know that UC has policies that can show you how to "blow the whistle" and can protect you from retaliation if the need arises.

This website provides important information for employees and supervisors about the whistleblower policies. Select one of the choices in the left-hand column to find the information you want.

**Universitywide Whistleblower Hotline:** (800) 403-4744 or universityofcalifornia.edu/hotline
*(The hotline is independently operated to help ensure confidentiality)*

**Whistleblower Poster** (pdf)

**Rights & Remedies under the ARRA of 2009**
Case Study

A large University department has a small unit that operates fairly autonomously & with very limited oversight.

This unit is involved in procuring services from outside vendors and re-charging various University organizations.
Background

A temporary employee was assigned to assist with a backlog problem. This employee reported to her supervisor that a substantial amount of expenses had not been re-charged.

Senior department management became suspicious at this report and noticed that none of the bills for a particular vendor had been re-charged in over a year.
Decision Point

1) Has a protected disclosure been made?

2) Does this matter meet the criteria for reporting to the LDO or another appropriate office?
The senior department manager called the phone number listed on the invoices and got an answering machine. The call was not returned.
The manager drove by the address on the invoice and found that it was a UPS mail box store.
Research

The manager called the Better Business Bureau and conducted a Dun & Bradstreet search without finding any information on the business.
Amount at Risk

The manager’s research found that the University had paid this vendor in excess of $250,000 over several years.
Considerations

1) Did the manager go too far?

2) Is this matter now reportable to the LDO or another appropriate office?

3) What should the manager’s next steps be?
Action Plan

With this information, the senior manager and another department supervisor confronted the employee on a Friday afternoon about the vendor and the failure to re-charge for their services.

The employee was perceived as being evasive but did not admit to any wrongdoing.

She was told to be available on Monday to go over in detail the operation of her unit.
Reflection

1) Should the manager and the supervisor have confronted the employee with questions about the vendor and the failure to re-charge for the billed expenses?

2) Is this matter now reportable to the LDO or another appropriate office?
Outcomes

On Monday, the department found that all of the records in the unit had been removed over the weekend and information had been deleted from the employee’s computer.

The employee had left a message saying that she could be contacted through her attorney.

*Then they called Internal Audit.*
Resources

The Education & Training Page of the Ethics, Compliance & Audit Services site includes case studies, slideshows & videos, under the Whistleblower Training section.

http://www.universityofcalifornia.edu/compaudit/educationtraining.html
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